

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5304

IN THE MATTER OF:

Served April 6, 1998

Application of PHOENIX LIMOUSINE &)	Case No. AP-98-10
TOUR COMPANY for a Certificate of)	
Authority -- Irregular Route)	
Operations)	

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. The application is unopposed.

Applicant held WMATC Certificate of Authority No. 344 until January 23, 1997, when it was revoked for applicant's willful failure to comply with the insurance provisions of the Compact and regulations thereunder.¹

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Applicant proposes commencing operations with one van. Applicant's proposed tariff contains rates for transportation under the DC Medicaid program.

Applicant filed a balance sheet as of December 31, 1997, showing assets of \$40,622; liabilities of \$39,622; and equity of \$1,000. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC operating income of \$125,000; expenses of \$87,236; and net income of \$37,764.

Applicant certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder. Applicant, however, admits transporting passengers for hire in the Metropolitan District after the certificate of authority it once held was revoked.

¹ In re Phoenix Limo. & Tour Co., No. MP-96-61, Order No. 5010 (Jan. 23, 1997).

The Compact, Title II, Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.² The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.³

Applicant's certificate of authority was suspended on December 10, 1996, and revoked on January 23, 1997, for applicant's failure to comply with the Commission's insurance regulations.⁴ Those regulations provide that each WMATC carrier shall maintain on file with the Commission a certificate of insurance and that the penalty for failure to comply is automatic suspension.⁵ Similarly, the Compact provides that a certificate of authority is not valid unless the holder is in compliance with the insurance requirements of the Commission.⁶ As a WMATC carrier, applicant cannot claim ignorance of WMATC insurance regulations, its own failure to maintain on file with the Commission a certificate of insurance, and the penalty for that failure.⁷ Accordingly, applicant's unauthorized operations after December 9, 1996, must be viewed as knowing and willful.

We are mindful that the civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.⁸ Accordingly, one of the factors we take into consideration when determining the appropriate size of a forfeiture is whether the carrier profited from its misdeeds.⁹

Applicant states it continued transporting passengers for hire in the Metropolitan District for 183 days after January 23, 1997, or

² In re Affordable Airport Charter, Inc., & Bach Vu, t/a Affordable Airport Charter, No. MP-97-76, Order No. 5276 (Feb. 17, 1998); In re Safe Ride Servs., Inc., No. MP-97-83, Order No. 5269 (Feb. 5, 1998); In re Megaheds, Inc., t/a Megaheds Transp., No. AP-97-24, Order No. 5113 at 7 (June 26, 1997); In re Bill Appell, t/a Personal Pace Tours/Tech Tours Wash., No. MP-95-18, Order No. 4762 (Feb. 8, 1996).

³ Order No. 5276; Order No. 5269; Order No. 5113 at 7; Order No. 4762.

⁴ Order No. 5010.

⁵ Commission Regulation No. 58.

⁶ Compact, tit. II, art. XI, § 7(g).

⁷ Cf. Order No. 5276 (WMATC carrier charged with knowledge of WMATC operating authority requirements).

⁸ Id.

⁹ Id.

228 days after December 9, 1996. We will assess a forfeiture of \$250 per day¹⁰ or \$57,000. We will suspend all but \$3,500 in recognition of applicant's net loss of approximately \$20,000, in 1997.¹¹

Applicant's knowing and willful violation of the Compact has obvious implications with regard to whether we may approve the application at this time. The burden is on applicant to establish regulatory compliance fitness.¹² A determination of compliance fitness is prospective in nature.¹³ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.¹⁴ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.¹⁵

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.¹⁶

Few violations are more serious than operating without authority. We regard applicant's conduct as flagrant but not necessarily persistent considering applicant ceased operating in July 1997 apparently of its own volition. We are unaware of any mitigating circumstances. On the other hand, that applicant has filed this application for operating authority is some evidence of its

¹⁰ See Order No. 5269 (assessing \$250 per day for operating without authority); Order No. 5113 at 8 (same); Order No. 4762 (same after suspension and revocation).

¹¹ See Order No. 4762 (forfeiture reduced in light of negligible profit); In re Regency Limo. Serv., Inc., No. MP-94-01, Order No. 4323 (June 21, 1994) (forfeiture waived for insolvency); In re Mustang Tours, Inc., No. MP-93-42, Order No. 4224 (Dec. 15, 1993) (forfeiture reduced in light of negligible profit); In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3891 (Feb. 24, 1992) (forfeiture reduced in absence of evidence of unjust enrichment).

¹² Order No. 5113 at 8; In re William J. Appell, t/a Tech Tours, No. AP-96-01, Order No. 4830 at 2 (May 8, 1996); Order No. 4323 at 6; Order No. 4224 at 3.

¹³ In re Madison Limo. Serv., Inc., t/a Madison Limo, No. AP-96-18, Order No. 4857 (May 22, 1996); Order No. 4830 at 3.

¹⁴ Order No. 4857.

¹⁵ Id.

¹⁶ Order No. 5113 at 8-9; Order No. 4857; Order No. 4830 at 3.

willingness and ability to comport with the Compact and rules and regulations thereunder in the future. Payment of the forfeiture assessed herein will add to that showing and serve to correct applicant's past mistakes. Accordingly, subject to a period of probation as prescribed below, we believe the record supports a finding of prospective compliance fitness.

In conclusion, based on the evidence in this record, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Pursuant to Article XI, Section 7(d), we will condition reissuance of Certificate No. 344 as follows. We shall place applicant on probation for 90 days, commencing with the reissuance of Certificate No. 344. A subsequent finding that applicant has willfully violated the Compact, or the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for suspension and/or revocation of Certificate No. 344, regardless of the nature of the violation.

THEREFORE, IT IS ORDERED:

1. That Certificate of Authority No. 344 shall be reissued to Phoenix Limousine & Tour Company, 930 M Street, N.W., Suite 518, Washington, DC 20001, upon applicant's timely compliance with the following conditions:

a. Applicant shall pay to the Commission within thirty days from the date of this order, by money order, certified check, or cashiers check, the sum of three thousand five hundred dollars (\$3,500), for knowing and willful violations of the Compact.

b. Applicant shall file with the Commission within thirty days from the date of this order: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

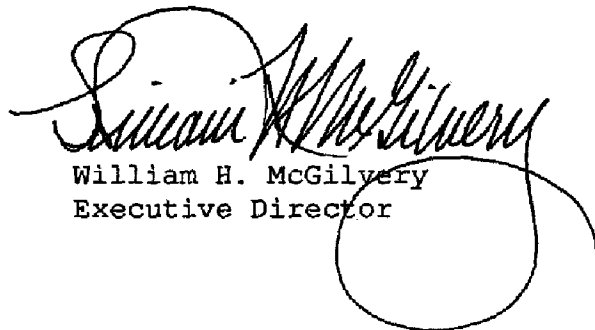
2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate of Authority No. 344 has been reissued in accordance with the preceding paragraph.

3. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

4. That applicant shall be on probation for 90 days, commencing with the reissuance of Certificate No. 344.

5. That a subsequent finding that applicant has willfully violated the Compact, or the Commission's rules, regulations or orders thereunder, during the period of probation shall constitute grounds for suspension and/or revocation of Certificate No. 344, regardless of the nature of the violation.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:



William H. McGilvery
Executive Director